CRP 183/2006
BEFORE

THE HON'BLE MR.JUSTICE HN SARMA

Heard Mr S K Medhi, learned counsel for the petitioner and also heard Mr R K Jain, learned counsel for the respondent No 1. None appears on behalf of respondent No 2 inspite of service of notice.

2. The revisional jurisdiction of this Court is sought to be invoked in this petition filed under Section 115, CPC, by challenging the order dated 4.4.2006 passed in Misc (J) Case No 37/2006 arising out of Money Suit No 146/2003 by the learned Civil Judge, (Senior Division) No 2, Kamrup.

3. By the impugned order, the learned trial Court rejected to decide the question of maintainability of the suit in favour of the plaintiff/petitioner.

4. The plaintiff filed the aforesaid Money Suit for realization of a sum of Rs 1,097,100/- with interest from the defendants out of the five defendants who were impleaded in the suit. The defendant No 4 is the Power Grid Corporation of India Limited (A Government of India Enterprises) G S Road, Guwahati -781005. The defendants contested the suit by filing written statements, wherein the defence pleaded is lack of territorial jurisdiction; limitation and want of the cause of action for the suit. The defendant/petitioner by filing a separate application has raised the issue of jurisdiction of the Court praying to decide issue as a preliminary issue. Such objection is raised both on the count that the suit is barred by limitation and that the Court has no territorial jurisdiction to try the suit. A written objection was also filed by the plaintiff opposing the said prayer. The learned trial Court considering the rival submissions for and against rejected the prayer by the impugned order.

5. Challenging the impugned order, it is submitted by Mr Medhi that a reading of the averments made in the plaint makes it clear that the cause of action pleaded in the suit has not arisen within the territorial jurisdiction of the learned trial Court and as such, the learned trial Court ought not to have admitted the suit. It is further submitted that on the face of the plaint itself, it is clear that the suit is barred by limitation and the relevant clause of the contract which is stated to be the basis of the suit provides that all disputes arising out of the contract shall be tried by the appropriate Civil Court at Kolkata only and on such counts the impugned order is not sustainable and learned trial Court has no jurisdiction to try the suit.

6. Dealing with the objection regarding want of territorial jurisdiction of the learned trial Court to try the suit, Mr Medhi has based his contention on the Clause 15.9 of the general term and conditions of tender. I have perused and examined the said clause, which provides that, all kinds of legal proceedings in any matter arising out of the contract shall be triable by appropriate Civil Court at Calcutta only. But the defendants/petitioner has not pleaded this fact in their written statements and the related application relating to existence of such a Clause. That apart, the whole claim of the plaintiff is based on the fact that there has been short delivery of the materials of inferior quality to them and consequent claim for delivery of the balance undelivered quantity or to refund the balance amount for such undelivered part of the materials. Thus, the claim of the plaintiff arises out of non-delivery of the required quantity and one of the causes of action for the suit is for suc non-delivery, which is distinct and separate one. Clause 15.9 of the general terms of contract does not specifically oust the jurisdiction of the Gauhati Court and as such the plaintiff is entitled to bring the suit where one of the defendants (i.e., defendant No 4) at the commencement of the suit resides and carries on business within the local limits of jurisdiction of Gauhati Court. It is seen from the plai

nt that the plaintiff has impleaded the Power Grid Corporation of India, detailing his address at Ulubari, Guwahati 7, which is admittedly the divisional office of the Corporation.

Mr Medhi in support of his contention has relied on the decision of the Apex Court reported in (2004) 4 SCC 677 (New Moga Transport Co (Through its proprietor Krishanlal Jhanwar) Vs- United India Insurance Co Ltd and Others) which was relied on by the learned trial Court, and submits that in the plaint no nexus of defendant No 4 with the cause of action for the suit is disclosed regarding its business relationship with the plaintiff on the disputed issue. But the fact remains that defendant No 4 is the divisional office of the Corporation and arrayed as defendant in the suit. The plaintiff is the dominus latis which has the liberty to file the suit where he likes and where a part of the cause of action arises or one of te defendants resides or carries on business under Section 20 of the CPC. There is also no mention in the written statements that the other defendants have raised their objection regarding their impleadment in the suit. Thus, when one of the defendants resides within the territorial jurisdiction of this Court, whose responsibility to redress the grievances of the plaintiff is pleaded at Para 3 of the plaint, certainly the Court has territorial jurisdiction to try the suit. The ratio of the decision rendered by the Apex Court does not apply in the facts of the present case. Although Mr Medhi has strenuously urges that the plaintiff does not show any cause of action upon respondent No 4, for that purpose and for proper remedy on such allegation, the defendants should have raised this issue before the learned trial Court by filing proper application.

7. So far the point of limitation as raised by Mr Medhi, it is seen tat at Para 15 of the plaint, the plaintiff has stated that the cause of action arose on various dates including 8.8.2001, 29.8.2001, 26.11.2001. That is how the cause of action arose on the aforesaid dates is a question to be determined by evidence to be laid in the suit and consequently, it cannot be specifically held, from a bare reading of the plaint that the suit is barred by limitation, such question being always a question of fact.

8. In view of the aforesaid discussions I do not find that the learned trial Court committed any jurisdictional error in passing the impugned order. Consequently, it stands rejected subject to the aforesaid observations. Mr Medhi, at this stage submits that some adverse order might have been passed by the trial Court during pendency of present proceeding. The learned trial Court would take note of this fact and if any order adverse to the petitioner has been passed after passing of the interim order by this Court on 21.7.2006 that may be recalled back, Mr R K Jain has not objected in this aspect.

9. No costs.